

APPELLATE JURISDICTION (a)

MANTENA RAYAPARAJAppellant.

CHEKURI VENKATARAJRespondent.

By Hindu law an exchange of lands followed by possession, need not be evidenced by writing.

Special Appeals Nos. 102 of 1853, 69 of 1856 and 195 of 1858 observed upon.

1862.
December 5.
S. A. No. 20
of 1861.

THIS was a special appeal against the decree of M. Jagga Rau, the Principal Sadr Amin of Rajahmundry, in Appeal Suit No. 182 of 1861. It raised the question whether or not a merely verbal grant of land in exchange, followed by possession, is valid by Hindu law?

Sloan, for the appellant, the plaintiff, contended that the grant should be evidenced by writing, and that it would lead to frequent fraud if the law were otherwise.

Branson amicus curiae, referred to *Doe dem. Seebkristo v. The East India Company (b)*.

SCOTLAND, C. J. :—Upon the only point now before us we must hold the present transaction valid. It seems from the case just referred to and other authorities, that, under the Hindu law, proof of a verbal grant of land, whether by way of exchange, sale or gift, is good when followed by possession and otherwise unobjectionable. Indeed in no case does Hindu law appear absolutely to require writing, though as evidence it regards and inculcates a writing as of additional force and value. 1 Strange, *Hindu Law* 277. (See also a case decided by the Madras Sadr Adalat, Special Appeal, No. 56 of 1857 (c)—where a verbal assignment of waste land was held valid.)

These are instances, no doubt, in which works of authority speak expressly of particular transactions being evidenced by writing. But I believe in no case can it be considered now that the Hindu law in this respect is treated as being anything more than directory. The great importance and value, however, of written instruments as evidence,

(a) Present Scotland, C. J. and Phillips, J.

(b) 6 Moore I. A. Cases 267. (c) M. S. D. 1857, pp. 143, 143

make it most desirable for the true interests of the parties and the ends of justice, that they should be generally adopted; and where from the circumstances and nature of the transaction, or the dealings between the parties, or from the usages of the country, a writing was reasonably to be expected, mere oral evidence would very properly be received and acted upon with extreme caution and deliberation; as such evidence alone can unquestionably be easily made the means of falsehood and fraud. The reported cases in which the Sadr Court appears to have decided against the sufficiency of oral evidence in the instances of a sale of land, an assignment of a bond, and a perpetual lease (a) we cannot, I think, regard as satisfactory authorities in so far as they were intended to decide not merely the insufficiency of the particular circumstances in evidence in each case, but that the law rendered a writing absolutely indispensable to the validity of such sales, assignments and leases. Upon the present occasion we are concluded by the decision of the Principal Sadr Amin upon the evidence in point of fact, and in point of law we think the objection raised is not valid.

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PHILLIPS, J. concurred.

Appeal dismissed.

(a) S. A. No. 69 of 1856, M. S. D. 1856 p. 150; S. A. No. 102 of 1853, M. S. D. 1854, p. 40; S. A. No. 195 of 1858, M. S. D. 1859, p. 63.

NOTE.—As to the special rules of Hindu law relating to exchanges see 2 Colebr. Dig. 336, where Jagunnátha lays down that the subjects exchanged must be of the same nature, and that their quantities or pecuniary values must be equal. As to the latter proposition the Hindu law, like English Equity (*Bartram v. Whichcote* 6 Sim. 86; *Ferrand v. Wilson* 4 Hare 385) appears to admit of the receipt of money for a Jewely of exchange: R. A. No. 86 of 1851, M. S. D. 1852, pp. 144, 146.

The following appear to be some of the instances referred to by the Chief Justice "in which works of authority speak expressly of particular transactions being evidenced by writing:" "When the bailee carries the very thing bailed to another for pledge he shall cause a deed of pledge to be recorded in writing and give with it the deed [which he received] in the first instance," Prajapati, cited in the *Vyavahara Mayukha* p. 24. "Let a king having given land, or assigned fixed property—cause his gift to be written, for the information of good princes who will succeed him, either on prepared silk or on a plate of copper, sealed above with his own signet." Yajnavalkya and Brihaspati cited in the *Vyavahara Mayukha* p. 26; and see 2 Coleb. Dig. 166, 162, 163.